

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION

ROGER A. LIBBY,

Plaintiff,

v.

ERIC J. LIBBY,

Defendant.

No. 2:24-cv-69-SRW

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court upon a letter addressed to the Clerk of Court, dated October 17, 2024, from Plaintiff Roger A. Libby. ECF No. 5. Therein, Plaintiff indicates he mistakenly filed the instant case due to a miscommunication with a third party. *Id.* at 2. Plaintiff states the complaint “should not have been mailed to the Court” because it is a duplicative filing of an already pending case. *See Libby v. Libby*, Case No. 2:24-cv-11-JMB (E.D. Mo. Jan. 30, 2024). He asks the Court to “withdraw this filing from the Court docket . . . as an honest mistake.” *Id.* Consequently, the Court construes Plaintiff’s letter as a notice of voluntary dismissal filed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, and will order the dismissal of this case, without prejudice. This dismissal will not count as a “strike” under 28 U.S.C. § 1915(g).

Plaintiff also asks for relief from paying the \$405.00 filing, which he has already paid. ECF No. 5. Because he is a prisoner, such dismissal would not normally change his obligation to pay the filing fee. *See* 28 U.S.C. § 1915(b); *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997) (under the Prison Litigation Reform Act, the filing fee is incurred at the time a prisoner files a civil action or appeal). *See also Hains v. Washington*, 131 F.3d 1248, 1250 (7th Cir. 1997) (“[T]he filing of a complaint (or appeal) is the act that creates the obligation to pay fees, and what the judge does later does not relieve a litigant of this responsibility.”). Here, however, Plaintiff promptly notified the Court he never intended this lawsuit to be filed. In the interests of justice, the Court will waive

and refund the filing fee for Plaintiff under these unusual circumstances. The Court is unlikely to waive the fee again if Plaintiff makes a similar mistake in the future.

Accordingly, in accordance with the Plaintiff's notice of voluntary dismissal,

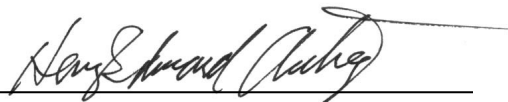
**IT IS HEREBY ORDERED** that the Clerk of Court shall make an entry in the docket record reflecting the dismissal of this action **without** prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i).

**IT IS FURTHER ORDERED** that Plaintiff's pro se motion for relief [ECF No. 5] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of Court shall return to Plaintiff the payment of his \$405.00 filing fee.

**IT IS HEREBY CERTIFIED** that an appeal from this dismissal would not be taken in good faith.

Dated this 21<sup>st</sup> day of January, 2025.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE